

REMARKS

The Office Action mailed August 27, 2003 has been carefully reviewed and considered. In response, Claims 1, 7, 12, 14 and 17 have been amended and new Claim 19 has been added. Claims 1, 7, 12, 14 and 17 having been amended, and new Claim 19 having been added, the claims now pending in the present application are Claims 1-19.

The present amendment is accompanied by a Request for Continued Examination (RCE) and a Request for a Three-Month Extension of Time in which to respond to the outstanding Office Action mailed August 27, 2003, thereby extending the period for timely response to the outstanding Office Action to February 27, 2004.

On page 2 of the Office Action, Claims 12 -16 are objected to due to certain informalities. It is believed that these informalities have been corrected in the current amendments. In view of these corrections, it is respectfully submitted that the Examiner's objections are now mute.

On page 2 of the Office Action, the Examiner has rejected Claims 1-3, 7, 8, 12, 13, 17 and 18 as being anticipated under §102(b) by Thomsen et al. (U.S. Patent No. 5,860,691). The Examiner has asserted that Thomsen et al. disclose a tonneau cover apparatus (10) comprising: a flexible cover (fabric 100); a pivoting end plate (rigid end rails 104) having a radial engaging surface (guiding edge 138); a support frame (16) having side rails (34); and a locking member (rod 118); wherein each side rail includes an end plate engagement member (latch 38); and wherein the end plate engagement members have a radial receiving surface (receiving slot 136).

The Examiner's reference to the Thomsen et al. reference is appreciated so that the present invention can be clearly distinguished over the disclosure of Thomsen et al. In this regard, it is noted that the claims have been amended to clarify the invention and to clearly distinguish it from Thomsen et al., which does not disclose a pivoting end

plate but rather a rigid end rail 104 that simply slides into a seated position in which a rearward end (guiding edge 138) of the rigid end rail 104 is seated in a receiving slot (receiving slot 136). It will be appreciated, however, that when the rigid end rail 104 becomes seated it does not appear to pivot into position, nor is it disclosed to pivot into position, but rather, the guiding edge 138 inserted into position as described in column 6, lines 1-22 of the '691 patent. Furthermore, the portion of the end rail that is inserted into the previously described slot is the rearward end of the end rail as oppose to the forward end of the end rail or end plate as shown in the drawings and claimed in the present claims. Furthermore, even if the rearward end of the rigid end rail was arranged to pivot into position, which it does not, it would not stretch the flexible cover but would in fact loosen the cover as the rearward end pivots with respect to the engagement member, because it would have to pivot toward, not away from, the flexible cover. For this reason, the rigid end rail of Thomsen et al. functions in a completely different manner than the end plate of the present invention, which stretches the flexible cover as it pivots into the fixed stretching position. For this reason, the §102 rejection of the claims is respectfully traversed. Insofar as it may be maintained with respect the present claims, reconsideration and withdrawal is respectfully requested.

In regard to the claims, it is further noted that Claim 1 does not recite a radial receiving surface as one might presume when reading the Examiners' remarks repeated hereinabove. Instead, Claim 1 recites a receiving surface and is without a limitation to a radial receiving surface, but such a recitation is provided in dependent claim 2.

With respect to the Examiner's remarks, it is also noted that the rod member 118 disclosed by Thomsen et al. is not a locking member that retains the end plate in a closed or fixed stretching position in the manner in which the locking member of the present invention recited in Claim 12 retains the present end plate. Instead, the rod 118, is simply a member about which the flexible cover is sewn in order to secure the flexible cover to the end plate. In this regard, the Examiner's attention is drawn to a discussion of the rod 118 in the '691 patent at column 5, lines 49-54.

The further comments by the Examiner on page 3 regarding the response to prior arguments and the allowable subject matter are noted with appreciation.

On page 4, the Examiner has made note of two additional patents that are listed on the PTO Form 892 accompanying the outstanding Office Action. These additional patents are U.S. Patent No. 6,568,740 to Dimmer and U.S. Patent No. 6,575,520 to Spencer. The undersigned attorney respectfully submits that these two patents are not prior art with respect to the present application. This is because each of these patents issued from patent applications that were filed on October 31, 2001, well after the filing date of U.S. Provisional Patent Application Serial No. 60/225,109, filed August 14, 2000, to which the present application claims priority. The Applicants respectfully reserve the right to swear back to even earlier dates of invention for the various inventions disclosed in the present application and its underlying provisional application. The undersigned attorney respectfully requests the Examiner to acknowledge for the record, that the two patents listed on the PTO 892 provided with the most recent Office Action are not regarded as prior art for the present application.

In view of the foregoing, it is respectfully submitted that the present application is now in condition for allowance and notification to that effect is earnestly solicited.

The Examiner is respectfully urged to contact the undersigned attorney if there are any further matters standing in the way of allowance of the above-identified application and it is believed by the Examiner that these matters can be addressed and resolved in a telephone conference and thereby speed the conclusion of the present prosecution. The Examiner's consideration in this regard will be appreciated.

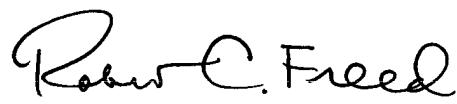
Respectfully submitted,

For the Applicants,

By their Attorneys

MOORE, HANSEN & SUMNER
Customer No. 22854
2900 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Tel. 612-332-8200

February 26, 2004



Robert C. Freed, Registration No. 32,569